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Tianhai Lace USA LLC

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TIANHAI LACE USA LLC., a New York

corporation,

Plaintiff,

v.

VAN DALE INDUSTRIES, INC.,

a New York corporation, and

ALBERT ADES, a citizen of
New York

Defendants.

09 CIV 9782



COMPLAINT

JURY TRIAL DEMANDED

Civil Action No.: 09-CV-9782-GBD

ECF CASE

Plaintiff Tianhai Lace USA LLC. ("Tianhai"), by and through its attorneys, Darby & Darby, for its Complaint against Defendants, Van Dale Industries, Inc. and Albert Ades (collectively referred to herein as "Defendants"), alleges the following:

NATURE OF THIS ACTION

1. This is an action for: (i) copyright infringement in violation of 17 U.S.C. §101 *et seq.*; and (ii) unfair competition under New York common law.

THE PARTIES

2. Plaintiff, Tianhai, is a New York corporation with its principal place of business at 152 Madison Avenue Suite 1103, New York, New York 10016.

3. Upon information and belief, Defendant, Van Dale Industries, Inc. ("Van Dale") is a New York corporation with a place of business at 180 Madison Avenue, New York, New York, 10016.

4. Upon information and belief, Defendant, Albert Ades, is a resident of the city of New York and is President and Chairman of the Board of Defendant, Van Dale Industries, Inc.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction for Defendants' copyright infringement under 28 U.S.C. §§1331 and 1338.

6. This Court has subject matter jurisdiction for Defendants' Unfair Competition pursuant to 28 U.S.C. § 1338(b) and on the basis of supplemental jurisdiction.

7. Venue in this District is proper pursuant to 28 U.S.C. §1391 (b) and 1400(a).

8. This Court has in personam jurisdiction over Defendants pursuant to C.P.L.R. §§301 and 302 in that, upon information and belief, Defendants reside in this district, are soliciting and doing business within the State of New York on a regular and systematic basis, and/or have transacted business or committed tortious acts within this state, from which this cause of action arises.

FACTS COMMON TO ALL COUNTS

Tianhai's Copyright

9. Tianhai is and has been, a prominent designer and distributor of lace fabric. For many years Tianhai has created new and innovative lace fabric designs for use in connection

with women's apparel. It has developed a reputation as being a source of high quality lace. In order to insure exclusivity, its designs are protected under the Copyright Laws.

10. Tianhai's original, distinctive, and copyrighted lace designs, which have been and are being sold by Tianhai throughout the United States and within this district, are the lifeblood of Tianhai's business. These original, distinctive, and copyrighted lace designs set Tianhai apart from its competitors.

11. Because of Tianhai's position in the trade and its investment in developing its line of lace designs, it is vital to Tianhai's success that it conscientiously protect and enforce its intellectual property rights, which are a valuable asset and the source of significant customer loyalty and business.

12. In or about 2001, Tianhai created an original work of art for use as a lace design which Tianhai named "Oriental Beauty 7567." Pictures of the design are attached hereto as Exhibit A.

13. Tianhai first "published" (as that term is defined by the Copyright Act) the Oriental Beauty 7567 design in or about July 2001.

14. The Oriental Beauty 7567 design constitutes an original work of authorship and copyrightable subject matter under the laws of the United States, 17 U.S.C. §101 *et seq.* Tianhai is the owner of the Oriental Beauty 7567 design and owns all right, title and interest therein.

15. Tianhai has duly complied in all respects with the provisions of the copyright law of the United States, and has secured the exclusive rights and privileges in and to the Oriental Beauty 7567 design, as well as the copyright therein. Tianhai has duly registered its copyright in the Oriental Beauty 7567 design with the United States Copyright Office and is the owner of

Copyright Registration No. VA 1-200-095 for the Oriental Beauty 7567 design. A true and correct copy of the copyright registration for the copyright in this work is attached as Exhibit B.

16. All copies of the work have been sold in conformity with the provisions of the copyright law of the United States and Tianhai has fully complied in all respects with the provisions of the United States Copyright Act with respect to the Oriental Beauty 7567 design.

17. At all times since it created the Oriental Beauty 7567 design, Tianhai has been, and still is, the exclusive holder of all rights, title and interest in and to the copyright therein.

Defendants' Infringing Activities

18. Upon information and belief, Van Dale is a manufacturer and designer of apparel for women and children, specializing in underwear. Van Dale has sold in the United States women's underwear products in retail stores throughout the United States, including in this judicial district.

19. Upon information and belief, defendant, Albert Ades ("Ades"), is a resident of the City of New York and is an officer, director, partner, shareholder, manager, operator and/or agent of corporate defendant Van Dale, and/or otherwise exercises extensive control over Van Dale as its alter ego, and is an active participant, primary actor, or conscious, active and dominant force behind the wrongful acts of Van Dale complained of herein for the gain of the corporate defendant and for his own individual gain.

20. The Oriental Beauty 7567 design was in Tianhai's collection since at least 2003.

21. Between October and December 2004, Defendants were a customer of Tianhai and purchased over \$375,000 worth of fabric bearing the Oriental Beauty 7567 design.

22. Thereafter, Defendants abruptly stopped purchasing lace from Tianhai.

23. Upon information and belief, Defendants knew at the time it purchased the Oriental Beauty 7567 design lace from Tianhai, that the Oriental Beauty 7567 design was the copyrighted intellectual property of Tianhai.

24. Upon information and belief, Defendants acted with the intent of offering for sale to its customers women's garments incorporating the Oriental Beauty 7567 design.

25. In or about October 2009, Tianhai learned that Wal-Mart stores were offering for sale and selling a "control long line bra" under the label "SecreTreasures," marked Style#WMS-20, that prominently bore a lace design along the front of the garment that was virtually identical, if not identical, to Tianhai's Oriental Beauty 7567 design (hereinafter the "Infringing Garments"). Pictures of the Infringing Garments are attached as Exhibit C.

26. Upon information and belief, notwithstanding that Defendants had previously purchased lace featuring the Oriental Beauty 7567 design from Tianhai, Defendants had another fabric supplier manufacture lace fabric incorporating Tianhai's copyrighted Oriental Beauty 7567 design.

27. Upon information and belief, Defendants designed, created, manufactured, distributed, sold and offered for sale women's undergarments manufactured with lace fabric incorporating Tianhai's Oriental Beauty 7567 design but not supplied by Tianhai.

28. Defendants' use of the Oriental Beauty 7567 design was without Tianhai's knowledge or permission.

29. Defendants had access to the Oriental Beauty 7567 design prior to creating, designing, manufacturing, distributing and selling the Infringing Products.

30. Upon information and belief, with full and complete knowledge of Tianhai's copyrights discussed above, Defendants willfully infringed Tianhai's copyright in its Oriental

Beauty 7567 design by copying the Oriental Beauty 7567 design without Tianhai's permission, license, or consent.

31. Upon information and belief, Defendants stopped purchasing lace from Tianhai because, with full knowledge of Tianhai's copyrights, Defendants were manufacturing and/or purchasing unauthorized copies of Oriental Beauty 7567 design overseas at a greatly reduced rate.

32. Upon information and belief, Defendants have committed the infringing acts complained of herein willfully and with conscious disregard for Tianhai's rights.

33. Upon information and belief, Defendants' actions have caused damage and irreparable harm to Tianhai. Unless Defendants are compelled to discontinue these actions by the Court, Tianhai will continue to suffer such damage and irreparable harm.

34. Tianhai has no adequate remedy at law.

COUNT ONE
CLAIM FOR RELIEF - COPYRIGHT INFRINGEMENT
UNDER FEDERAL LAW

35. Tianhai repeats and realleges paragraphs 1-34 of this Complaint as if fully set forth herein.

36. Tianhai's Oriental Beauty 7567 design has never been dedicated to the public.

37. At all times pertinent to this Complaint, Tianhai is, and still is, the sole and exclusive proprietor of all right, title and interest in and to the Oriental Beauty 7567 design, including the copyrights therein. Tianhai has never assigned, licensed, or otherwise transferred any of these rights, including its copyrights to Defendants. Nor has Tianhai ever authorized Defendants to copy, distribute, or license the Oriental Beauty 7567 design.

38. By its acts complained of herein, Defendants have infringed the copyright in the Oriental Beauty 7567 design in violation of §§106(1) and (2), and §501(a) of the United States Copyright Act, 17 U.S.C. §101, *et seq.*

39. Defendants have committed the acts complained of herein willfully

COUNT TWO
CLAIM FOR RELIEF – UNFAIR COMPETITION
NEW YORK STATE COMMON LAW

40. Tianhai repeats and realleges paragraphs 1-39 of this Complaint as if fully set forth herein.

41. Tianhai has gone to great expense in developing, promoting the sale of, and commercially exploiting its copyrighted Oriental Beauty 7567 design.

42. As a result of the expenditure of money and skill in the development and promotion of Tianhai's lace fabrics incorporating Tianhai's copyrighted designs, including the Oriental Beauty 7567 design, Tianhai's lace fabrics have acquired substantial market value in the trade.

43. The lace fabric incorporated in the Infringing Garments was manufactured to lower quality standards than those of Tianhai. The use of lower quality lace has tarnished Tianhai's good name in the marketplace due to the perceived association between Defendants' lower quality goods being confused with Tianhai's goods.

44. Defendants, by its acts, have taken advantage of the knowledge and skill of Tianhai and of the goodwill developed by Tianhai, and has capitalized upon the market created by Tianhai for its designs.

45. The aforesaid acts of Defendants, in manufacturing, distributing, offering for sale and selling and/or causing to be manufactured, distributed, offered for sale and/or sold, the

infringing garments, constitutes inequitable conduct, unfair trade practices and unfair competition, and are likely to deceive and confusion Tianhai 's customers and other apparel and retail distributors into believing that the Infringing Garments are manufactured from lace fabric supplied by Tianhai or are sponsored by, licensed by, endorsed by or are otherwise associated with Tianhai .

46. Defendants' acts constitute misappropriation or attempted misappropriation of Tianhai's copyrighted design and the goodwill and reputation which are associated therewith.

47. Defendants have misappropriated Tianhai's goodwill and the benefits of Tianhai's skill and expenditures in the development and design of the Oriental Beauty 7567 design and by reason thereof have caused irreparable injury to Tianhai in the Tianhai's market has been reduced thereby, which injury will continue as long as Defendants continue to manufacture, distributed, offer to sell and/or sell and/or cause to be manufactured, distributed, offered for sale and sold the Infringing Garments.

48. Upon information and belief, Defendants have intentionally and deliberately copied Tianhai's copyrighted Oriental Beauty 7567 design for the purpose of trading on Tianhai's goodwill.

49. Defendants have manufactured, advertised, promoted, distributed and/or sold the Infringing Garments without authorization, license or permission from Tianhai.

50. Defendants' acts have damaged Tianhai in an amount as yet unknown and may further damage Tianhai in such manner that Tianhai has no adequate remedy at law.

JURY TRIAL DEMAND

51. Tianhai hereby demands a trial by jury pursuant to Fed. R. Civ. P. 38.

PRAYER FOR RELIEF

WHEREFORE, Tianhai prays for judgment against Defendants that:

A. Defendants willfully infringed Tianhai's copyright in the Oriental Beauty 7567 design.

B. Defendants, its officers, agents, servants, employees, and attorneys, and all others in active concert or participation with them, including any and all third party fabric, lace, ornamental trim, and/or apparel manufacturers, distributors and suppliers who receive actual notice of the Order or Judgment by any method:

- i. be permanently enjoined and restrained from copying, reproducing, using, selling, manufacturing, advertising, or promoting copies of the Oriental Beauty 7567 design or any design substantially similar thereto;
- ii. be permanently enjoined and restrained from copying, reproducing, using, selling, manufacturing, or creating derivative works based upon the Oriental Beauty 7567 design or any design substantially similar thereto; and
- iii. be ordered to surrender to Tianhai all Infringing Garments or other garments or materials in its possession, custody or control displaying, copying, and/or bearing the Oriental Beauty 7567 design or any design substantially similar thereto.

C. Defendants be ordered to send written notice, approved by the Court, to each licensee, manufacturer, supplier, distributor, wholesaler and retailer, or any other party who manufactured the Infringing Garments, sold the Infringing Garments, or manufactured or sold other garments bearing the Oriental Beauty 7567 design, with a copy of each such written notice to be furnished to Tianhai:

i. requesting that the recipient surrender to Tianhai all garments bearing the Oriental Beauty 7567 design in its possession, custody or control;

ii. advising the recipient that pursuant to the Judgment of this Court, Defendants have been enjoined from copying, reproducing, using, selling, manufacturing, advertising, or promoting copies of the Oriental Beauty 7567 design or authorizing any third party to copying, reproducing, using, selling, manufacturing, advertising, or promoting copies of the Oriental Beauty 7567 design.

D. Defendants destroy all Infringing Garments, materials, documents, catalogues, or advertisements bearing the Oriental Beauty 7567 design in Defendants' possession, custody and control pursuant to 17 U.S.C. §503.

E. Defendants be required to pay Oriental Beauty 7567 design all profits realized by Defendants as a result of its unlawful infringing acts as complained of herein pursuant to 17 U.S.C. §504.

F. Defendants be required to compensate Tianhai for all actual damages suffered by Tianhai as a result of Defendants' unlawful infringing acts as complained of herein pursuant to 17 U.S.C. §504.

G. In the alternative, Defendants be required to pay Tianhai statutory damages pursuant to 17 U.S.C. §504, and in respect of Defendant said statutory damages shall be in the amount of \$150,000 as enhanced as a result of Defendants willful infringing acts as complained of herein.

H. Tianhai be awarded its costs, expenses and reasonable attorney's fees incurred in bringing this action pursuant to 17 U.S.C. §505.

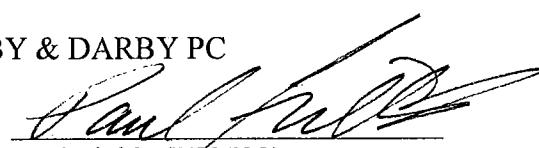
I. Defendants file with the Court, and serve upon Tianhai's counsel, within thirty (30) days after the entry of the Judgment, a report in writing and under oath setting forth in detail the manner in which Defendants have complied with the requirements of such Judgment.

J. Tianhai is granted such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

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